

## § 840.12

section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(i) The regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may

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be submitted, and the closing date of the comment period.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35633, Aug. 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983; 53 FR 24882, June 30, 1988; 59 FR 60883, Nov. 28, 1994]

### § 840.12 Right of entry.

(a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

### § 840.13 Enforcement authority.

(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, 843.13, and 843.23 and subchapters G and J of this chapter.

(c) The procedural requirements of each State program relating to the penalties and sanctions mentioned in paragraphs (a) and (b) of this section shall be the same as or similar to those provided in sections 518 and 521 of the Act, respectively, and consistent with

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parts 843 and 845 and subchapters G and J of this chapter.

(d) Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in sections 518 and 521 of the Act.

[47 FR 35633, Aug. 16, 1982, as amended at 59 FR 54356, Oct. 28, 1994]

EDITORIAL NOTE: For a document suspending §840.13(a) in part, see 45 FR 51548, Aug. 4, 1980.

### § 840.14 Availability of records.

(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§772.15 and 773.6(d) of this chapter or paragraph (d) of this section.

(c) The State regulatory authority shall ensure compliance with paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, *Provided*, That the regulatory authority shall maintain

for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35633, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983; 65 FR 79670, Dec. 19, 2000]

### § 840.15 Public participation.

Each State program shall provide for public participation in enforcement of the State program consistent with that provided by 30 CFR parts 842, 843 and 845 and 43 CFR part 4.

### § 840.16 Compliance conference.

(a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in paragraphs (b) through (e) of this section.

(b) A permittee may request an on-site compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and §840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b).

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.